In the Supreme Court
OF THE
United States

OCTOBER TERM, 1942

No.

J. R. MASON,
Petitioner,
vs.
PALO VERDE IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

A concise statement of the case is contained in the foregoing petition under the heading of "Summary Statement of the Matter Involved".

I. THE COURT ERRED IN ENTERING A DECREE ENJOINING THE BONDHOLDERS FROM ASSERTING ANY CLAIMS AFTER THE ENTRY OF THE DECREE.

There is no provision in the Act, Title 11, Section 401-404, authorizing the Court to issue any injunction

whatever by the terms of the final decree. The provisions of the Act relating to the final decree are set forth supra. The only provision for an injunction is pending the proceeding. It would appear that the debtor can properly be left to the defenses it may have in any proceeding brought against it.

Helms v. Holms, 129 Fed. (2d) 263.

Petitioner claims the right to pursue any remedy he may have either against this district, that is the Palo Verde Irrigation District, or the officials of the County of Riverside. $14,000 of the principal amount of the bonds involved in this case were issued by the Palo Verde Joint Levee District of Riverside and Imperial Counties, California, under the provisions of Cal. Stats. 1905, page 327.

Section 10 of this Act reads as follows:

> "At the time when by law it is the duty of the board of supervisors of such county to fix the annual tax rate for such county, the said board of supervisors, taking as a basis the last previous report of the commissioners as hereinbefore specified, and adopted by them, for the amount of moneys necessary to be raised in said district for the purposes thereof for that year, and the valuation of the lands and improvements thereon within such district as furnished them by the county assessor, must levy a tax upon all taxable property in such levee district sufficient to raise the amount set forth in the report as made by said commissioners and adopted by said board of supervisors."

Now it will be observed that under the Palo Verde Act incorporating the Palo Verde Irrigation District, Cal. Stats. 1923, page 1067, section 12 provides:

> "The District is authorized and empowered, through its board of trustees, to take over the properties, property rights and functions of the Palo Verde Joint Levee District of Riverside and Imperial Counties, California, * * *"

This same section also provides:

> "All bondholders and creditors or other persons having rights or relations with said joint levee district or the trustees or officers thereof are hereby authorized and empowered to deal with the trustees of this district, and to enforce their rights as against this district in like manner as might be done against the joint levee district above mentioned and the trustees and officers thereof, * * *"

Section 24 of said Act provides further:

> "All bonds issued and the interest thereon shall be paid from revenue derived from an annual assessment upon the land within the district and the improvements thereon, * * *"

Now, it clearly appears from the foregoing that under the former Levee District Act, section 10 provides for assessments not only upon the lands but upon the improvements on the land, and what is more important, upon all personal property within the area, for section 10 (supra) says that the assessment is to be levied by the county upon all taxable property. Such levies were made by the county until the passing of the Palo Verde Irrigation District

Act providing for the succession by the Palo Verde Irrigation District of the rights and properties of the former Levee District as well as the old Drainage District, after which assessments against land only (without the improvements) are to be levied by the Board of Trustees of the Palo Verde Irrigation District.

Now we submit that the petitioner here still has rights against the officers created in the Levee District Act, including the county officers of the County of Riverside who were charged with certain duties under that act as we have shown, and that the only discharge of indebtedness which could be effected by the Bankruptcy Court in these proceedings was a discharge of the indebtedness so far as the Palo Verde Irrigation District was concerned and the properties upon which it would levy, and that the final decree exceeded the jurisdiction of the Court and was erroneous insofar as the following provision taken from that decree is concerned:

> "That all the old bonds and other obligations issued or assumed by petitioner affected by the Plan of Composition approved in this cause, whether heretofore surrendered and cancelled or remaining and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioner, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers or against the property situated therein or the owners thereof or against Palo Verde Joint Levee District of River-

side and Imperial Counties, California, or Palo Verde Drainage District or against the officers of either or the property situated in either, or the owners thereof; and in particular said holders are enjoined and restrained from prosecuting or furthering as against any defendants or respondents therein named any of those certain actions, proceedings or appeals now pending in the Justice's Court of Riverside Township, Riverside County, California, the Superior Court of the State of California, in and for the County of Riverside, the District Court of Appeal of the State of California in and for the Fourth Appellate District, and the Supreme Court of said State mentioned in the Court's Findings of Fact filed in this cause, dated October 6, 1938, and from taking any step or action in any of said actions, proceedings or appeals except to consent to the dismissal thereof; and" (R. Vol. I, pp. 13, 14.)

II. THE COURT ERRED IN FIXING A PERIOD OF TWELVE MONTHS WITHIN WHICH THE BONDHOLDERS SHOULD DEPOSIT THEIR BONDS WITH THE REGISTRAR OF THE COURT FOR PAYMENT.

An irrigation district bond does not outlaw (*Moody v. Provident I. D.*, 12 Cal. (2d) 389), and there is no provision in the Act (Tit. 11 U. S. C., sections 401-404) authorizing the Court to determine the period of time within which the creditors shall take the composition offer or be forever barred therefrom.

Section 12 of the bankruptcy act was eliminated in 1938. Prior to the Chandler Act subdivision (e) then read:

> "Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct and the case dismissed * * *"

Subdivision 57 (n) of the Bankruptcy Act of 1898 provided that claims should not be proved against the bankrupt's estate subsequent to six months after the adjudication (with certain exceptions). In 1938 this subdivision was recast to provide that:

> "except as otherwise provided in this Act, all claims which are not filed within six months after the first date set for the first meeting of creditors will not be allowed except for certain exceptions."

There is no such provision in the municipal bankruptcy act indicating that no like period was to be prescribed.

As the general bankruptcy law stood prior to 1938, the question sometimes came up as to what would happen in the case of a composition proceeding where a claim had not been proved within a year.

In the important case of *In re Englander's, Inc.*, 267 Fed. 1012, the Circuit Court had this question under consideration, and held that section 57 (n) does not deny to a creditor the right to share in a fund offered by the bankrupt in composition, declaring:

> "No one can, by a legal judgment, be deprived of his property, unless he is fairly subject to some provision of the law which visits the loss upon him."

The Court declared that the rights of creditors after confirmation of composition are not lost through the operation of section 57 (n).

The same principle should pertain in a municipal bankruptcy case, and unless there is some plain provision in the law depriving the petitioner of his rights, he should not be so deprived by a "judgment".

The case just cited holds in effect that the creditor obtains a property interest in the composition offering and that this is a property right of which he is not to be deprived except by statute.

In the case of *Nassau Smelting & Refining Works, Ltd., v. Brightwood Bronze Foundry Co.*, 265 U. S. 269, 44 S. Ct. 506, Mr. Justice Brandeis, considering section 57 (n) and section 12 (a), 12 (b) and 12 (e), declared:

> "Composition is a settlement by the bankrupt with his creditors. In a measure the composition supersedes and is outside of the bankruptcy proceedings."

He also declared, page 272:

> "There is no provision in the Act which declares, in terms, that the offer extends only to those who prove their claims. Why should proof, within the year, of the existence of the debt be required where, by including the claim in the schedule, it has been admitted by the bankrupt?"

Justice Brandeis also declared:

> "Nor can the time of proof of claims as distinguished from their allowance, be of legitimate interest to the bankrupt."

In other words, the bankrupt is not interested nor should be interested in the time which is fixed for acceptance of the provisions of a composition offer. What has been deposited does not belong to the bankrupt; it belongs to the creditors. The bankrupt is discharged from his debt and is no longer interested in the matter. This seems to be the theory of the decision.

In the case of *Matter of Lenox,* 2 Fed. (2d) 92, the Circuit Court stated:

> "This is a provision for the benefit of creditors, not for the benefit of the bankrupt. Against all provable claims the bankrupt is protected by his charge. The bankrupt's property belongs to his creditors, and not to himself. It has passed from him to the trustee, for the payment of his creditors. As among them, it is a matter of indifference to him how distribution is made. If one of them lose his right to participate in the common fund by failure to make proof within the period prescribed, it does not concern the bankrupt."

If it should be suggested that the creditor is not harmed by the provision since he stands here with his bonds and can deposit them now, it is respectfully suggested that, on the other hand, most certainly the bankrupt is not affected by the provision, he being neither adversely nor beneficially affected and should not be enriched thereby and he has no standing in the matter. Furthermore, so far as the creditor is concerned, he is affected in this very case because the time prescribed does not actually permit him to litigate the point should April 27th arrive before final decision has been

reached, nor is there any cogent reason for depriving him of his property rights by this judgment.

As a matter of fact, section 57 (n) was amended by the Act of 1938 to provide that claims not filed within the time limit may nevertheless be filed in such additional time as the Court may allow and shall be allowed against any surplus remaining in the case. This shows that the time limit of section 57 (n) is to benefit creditors rather than the bankrupt. (*Collier on Bankruptcy,* Vol. 3, 1941, p. 335.)

It is not suggested that section 57 (n) has any reference to municipal bankruptcy cases except by analogy.

As has been pointed out, supra, this same Court, six days earlier, in *Nolander v. Butte Valley Irrigation District,* while denying the contention that the limit of a year should be entirely eliminated, nevertheless held that instead of permitting a year from the date of the entry of the decree "instead it should have made the time a year from the date the decree is disposed of on appeal and on petition for certiorari, if any, or by failure to appeal or to seek certiorari". It appears that two different groups of judges of the same Circuit Court have different views on this subject.

III. THE COURT ERRED IN CHANGING THE PLAN OF COMPOSITION BY THE FINAL DECREE, AND IN ENTERING A DECREE ALTERING THE TERMS AND MEANING OF THE INTERLOCUTORY DECREE.

The final decree in this case declares that: "The true intent and meaning of said Interlocutory Decree and of said Plan of Composition are that said disbursing agent shall not, nor shall said Clerk, as Registrar, pay for any $1,000 bond and all appurtenant unpaid coupons thereof, delivered to it or him under the terms of said Plan and Decree or of this Decree, more than the sum of $248.10, and that no payment shall be made for detached coupons, except to the extent that a deduction has been made for them as missing coupons, and that said Interlocutory Decree and Plan should be so construed, interpreted and applied". (R. 11.)

The plan of composition is set forth at R. Vol. II, pp. 21-24, and it provides that the district proposes that: "This district proposes and offers to deliver to each and all of the owners and holders of any of the above mentioned bonds cash, or at district's option, the bonds of this district of the 'Third Issue of Bonds (Refunding)' of principal amount equal to 24.81 cents per dollar of the principal amount of the bonds of the above mentioned company and districts owned and held by the above mentioned owners and holders." (R. Vol. II, p. 22.)

At page 24 the district in its plan goes on to propose further ("also") as follows: "The district shall also deliver to each and all of the owners and holders

of any interest coupons detached from the above mentioned bonds, cash, or at district's option, the bonds of said district of the 'Third Issue of Bonds (Refunding)' of principal amount (a) equal to 20.50 cents for each dollar of face amount of any such detached coupons which came due prior to May 31, 1933, and (b) equal to the face amount of any such detached coupons due May 31, 1933, or subsequently." (R. Vol. II, p. 24.)

The plan of the district was accepted by the Reconstruction Finance Corporation, voted on by the electors of the district, and apparently accepted by a certain number of creditors. The interlocutory decree (R. Vol. II, p. 135) recited: "That said plan of composition of debts of petitioner Palo Verde Irrigation District, an irrigation district, be and the same is hereby approved and confirmed. That a true copy of said plan is attached to this decree, marked 'Exhibit A', and by reference made a part hereof."

The plan of composition attached thereto is set forth at R. Vol. II, pp. 143-147, and contains the same provisions above quoted.

The interlocutory decree specifically provides at R. Vol. II, p. 138: "For any interest coupons detached from the above mentioned bonds, the disbursing agent shall pay 20.50 cents for each dollar of face amount of any such detached coupons which came due previous to May 31, 1933, and the face amount of any such detached coupons due May 31, 1933, or subsequently."

Now the petitioner contends, as the owner and holder of coupons, that he should be paid therefor pursuant to said plan of composition, namely: 20.50 cents for each dollar of face amount of such coupons maturing on or before May 31, 1933, and the full face amount of all coupons maturing after that date. Obviously the coupons which he so holds amount to more than $248.10 as to each $1000 bond, but he contends that the plan of composition is clear and unambiguous and that so is the decree. Furthermore, many creditors have deposited and surrendered their bonds pursuant to this decree, no notice has been given to those bondholders as to the change in the decree, and it is not known what rights they may have. These creditors may all have the right to claim full payment for the coupons involved. The proceeding of the Court was arbitrary, without notice, and deprives the petitioner of vested rights he had in the interlocutory decree.

As shown above, the interlocutory decree was appealed to the Circuit Court and affirmed in the case of *Jordan v. Palo Verde Irrigation District,* 114 Fed. (2d) 691. Application was made to this Court for writ of certiorari which was denied. (61 S. Ct. 805.) Thus the terms of the decree became final.

This Court, in *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 60 S. Ct. 317, has determined the principle upon which this case should be decided. There this Court held the plan of composition binding because it was *res judicata,* although the act had been held to be unconstitutional in *Ashton v.*

Cameron County Water Imp. Dist., 56 S. Ct. 892, 298 U. S. 513. In this case we submit that the interlocutory decree is binding, whether or not it expressed the intention of the framers of the plan.

The Court below, in deciding this case against petitioner, declared:

> "The court did not attempt to nor did it alter the interlocutory decree in any manner. It did as it says it did, construe, interpret and apply the part of the interlocutory decree according to its 'true intent and meaning' in order to make plain that a strained, unjust and inconsistent construction argued for by appellant should not be followed."

In the case of *Bronson v. Schulten,* 104 U. S. (14 Otto) 410-418, this Court reviewed the question of the authority of a Court to reopen a judgment and declared:

> "But it is a rule equally well established, that after the Term has ended, all final judgments and decrees of the court pass beyond its control, unless steps be taken during that Term, by motion or otherwise, to set aside, modify or correct them, and if errors exist they can only be corrected by such proceeding by a writ of error or appeal as may be allowed in a court which, by law, can review the decision."

The only exception noted was a line of cases based upon the old English writ of error *coram vobis,* resulting in a line of authorities based on equity, narrowly defined but which requires diligence and absence of negligence.

See also:

34 *C. J.* 210;
U. S. v. Mayer, 235 U. S. 55, 35 S. Ct. 16;
Hickman v. Ft. Scott, 141 U. S. 415, 12 S. Ct. 9;
Bronson v. Schulten, supra;
Franch v. Hay, 22 Wall. 238;
McMicken v. Perin, 18 How. 507;
King v. Barr, 262 Fed. 56;
Mellon v. St. Louis Union Trust Co., 240 Fed. 359.

The Court below evidently recognized the obstacle, and to avoid it declared that the final decree "should not attempt to nor did it alter the interlocutory decree in any manner". We submit that is an overstatement.

IV. THIS FINAL DECREE VIOLATES THE RULE LAID DOWN IN ASHTON v. CAMERON COUNTY WATER IMP. DIST., 298 U. S. 513, 56 S. Ct. 892, IN THAT IT EFFECTIVELY INTERFERES WITH THE GOVERNMENTAL AND POLITICAL AFFAIRS OF THE DISTRICT.

Section 83 (c) of the Bankruptcy Act, Sec. 403, of Title 11, U. S. C. A., provides:

> "* * * but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner;"

In subdivision (i) of the same section 83 it is provided that:

> "Nothing contained in this chapter shall be construed to limit or impair the power of any State

> to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor."

It is but a step from the decree herein entered to one which would say that the district can never levy taxes except pursuant to an order of the bankruptcy Court. Indirectly, it says that now. For the first time, perhaps, we have the interference which was claimed under the interlocutory decree, which claim was repudiated by the Circuit Court of Appeals in 114 Fed. (2d) 691 and by this Court in its denial of writ of certiorari. A sovereign cannot confess such jurisdiction, so when it confesses such jurisdiction it ceases to be sovereign.

It seems inescapable that the final decree here, if it stand, must "Unsaddle a debt or burden upon a municipality which is quite clearly the equivalent of deposing a tax."

If this reasoning be correct, such a decree is explicitly prohibited by sub-section "c", Sec. 403, 11 U. S. C. A., by 28 U. S. C. Sec. 41 (1), as amended by Act of Congress August 1, 1937; by Bankruptcy Act, Sec. 64, sub. a, 11 U. S. C. Sec. 104, sub. a (4) and (5); by 265 Judicial Code; by 28 U. S. C. A. Sec. 379 and by *City of New York v. Feiring,* 313 U. S. 283, 85 L. Ed. 1337 et seq. Also by 7 Cal. Jur. 626.

These authorities are important to the solution of the problem involved in the instant case, because they prove the respect that the Congress has adhered to as

to matters unequivocally controlled by state law and which the rules of decision in the Federal Courts cannot trespass.

The main question as to whether one of these decrees interferes with the sovereignty of the state while repeatedly decided by the Circuit Courts of Appeals, has been consistently avoided by this Court, it is respectfully submitted. This Court has left on the one hand the decision in *U. S. v. Bekins,* 304 U. S. 27, 58 S. Ct. 811, holding on demurrer only that the Act in its broad terms is not in interference with sovereignty, and on the other left standing the decision in *Ashton v. Cameron,* 298 U. S. 513, 56 S. Ct. 892, holding that the things which the former municipal bankruptcy act declares could be done and the *Ashton* case disapproved, and which have now been done by the decree in this case are an unconstitutional invasion of states' rights.

This creditor can afford to lose what is involved in this case in dollars and cents, but it is only by a loss of dollars and cents that he is permitted in the Court and must first show a loss in dollars and cents before he can attempt to defend in the Court those principles of states' rights which he is charging have been swept aside during the last few years. He therefore again brings that question before this Court with the prayer that it may be determined, either by holding that the rule is firmly ensconced as in *U. S. v. Bekins* or as in *Ashton v. Cameron County.*

As this Honorable Court has ruled the bankruptcy power is "unrestricted and paramount", and that the States "may not pass or enforce laws to interfere with or complement the bankruptcy act or to provide additional or auxiliary regulations" (*Int. Shoe v. Pinkus,* 287 U.S. 261, 265), the sovereign power of the States to borrow money and contract the future revenues from taxation of real property, whether exercised directly or through an arm of the State to whom such taxing power has been confided, can no longer be viewed as sovereign, if the final decree here challenged is to stand, because such power is subject to regulation and control "unrestricted and paramount" by Congress.

Specifically, in this case, the final decree says that this public agency, a governmental institution of the State of California, and through it the State of California can, although sovereign, bow its head to control of the bankruptcy Court; that this state can, in the exercise of its sovereignty, submit to the continuing control of a Court which now says that it shall levy in effect taxes only for the amount decreed. Should this district, we submit, through the sovereign power of the legislature of the state or of its own volition impose a greater tax than the bankruptcy Court here allows, it could be restrained in the same Court and thus its sovoreignty and the sovereignty of the state is invaded.

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the Court below reversed and the proceeding directed to be dismissed.

Dated, Turlock, California,
March 3, 1943.

Respectfully submitted,
W. COBURN COOK,
Attorney for Petitioner.